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August 15, 2023

Via ECF

Hon. Paul A. Engelmayer, United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *In re: Morgan Stanley Data Security Litigation*, 1:20-cv-5914 (PAE)

We represent Morgan Stanley Smith Barney LLC in connection with the above-referenced matter. We write jointly with Settlement Class Counsel, Nussbaum Law Group and Morgan & Morgan. Pursuant to Rule 4.B of this Court's Individual Rules and Practices in Civil Cases, and consistent with the letter motion filed February 15, 2023 (ECF No. 203), the March 14, 2023 Letter submitted to this Court (ECF No. 208), the May 15,

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*NOT ADMITTED TO THE NEW YORK BAR
**ADMITTED ONLY TO THE CALIFORNIA BAR

2023 Letter submitted to this Court (ECF No. 210), and as we discussed on the record during the August 5, 2022 settlement approval hearing, we respectfully request leave to publicly file a redacted copy of the third quarterly status update report of the work completed to date by Kroll Inc. (the “Third Kroll Report”), given the sensitive personal and confidential information contained therein.

In the Second Circuit, there exists a rebuttable presumption of public access for any “judicial documents” filed with the court. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). Simply because a paper is filed with the court does not make it a “judicial document,” but rather the document must be “relevant to the performance of the judicial function” or useful in the judicial process. *Id.* at 119. Where a document is found to be a judicial document, but is not necessary for some kind of dispositive determination, the standard to rebut that presumption of public access and to sustain redactions is lower. *See Kewazinga Corp. v. Microsoft Corp.*, 2021 WL 1222122, at *5 (S.D.N.Y. Mar. 31, 2021). Two of the kinds of values that may justify the sealing or redaction of documents include protecting privacy interests of third parties or other sensitive information such as proprietary commercial information. *See Church & Dwight Co. v. SPD Swiss Precision Diagnostics GmbH*, 2018 WL 4253181, at *2 n.1 (S.D.N.Y. Sept. 5, 2018) (finding proposed redactions in post-trial submissions appropriate when narrowly tailored to protect proprietary and competitively sensitive information, including information that the parties were contractually obligated to keep confidential); *E.E.O.C. v. Kelley Drye & Warren LLP*, 2012 WL 691545, at *2 (S.D.N.Y. Mar. 2, 2012) (noting acceptable justifications for redactions include privacy interests of innocent third parties); *Standard & Poor's Corp. v. Commodity Exch., Inc.*, 541 F. Supp. 1273, 1277 (S.D.N.Y.

1982) (finding limited redactions justified where redactions were tailored to protecting party's commercial information, including index-rendering methodology, and in order to avoid potential harassment or disruptions that could prevent the relevant analysts from performing their jobs properly).

Here, the Third Kroll Report is not a submission in support of a dispositive motion, for which the most conservative approach would be warranted. As a result, the report is a judicial document subject to a lower presumption of public access. Nonetheless, the Third Kroll Report is "relevant to the performance of the judicial function": the Court ordered the parties to submit quarterly reports to ensure compliance with the settlement agreement. With that purpose in mind, the parties endeavored to narrowly tailor their redactions to the Third Kroll Report so that Settlement Class Members who may review the publicly available version can generally understand the steps that Kroll has undertaken to recover decommissioned devices and the success of those efforts. Specifically, the redactions obscure the details regarding Kroll's communications with certain downstream purchasers of the decommissioned drives at issue, which includes the personal identifiable information ("PII") of those downstream purchasers. The redactions are intended to both shield the privacy of the downstream purchasers and avoid sharing information that could potentially assist a malicious actor in finding and acquiring NetApp devices before Kroll is able to locate them.

Respectfully submitted,

/s/ Susanna M. Buerger

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/s/ Linda P. Nussbaum

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/s/ Jean Martin

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Settlement Class Counsel

cc: All counsel of record via ECF

The Court finds that the redactions are no greater than necessary to protect the purchasers' privacy interests and prevent obstruction of Kroll's investigation. Accordingly, the Court approves the filing of the redacted report.
SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge
August 17, 2023